

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 708 - SB 689

March 13, 2009

SUMMARY OF BILL: Reclassifies certain sexual offenses committed against a child between 13 and 16 years of age as rape of a child, a Class A felony. These offenses currently are classified as statutory rape (Class E felony), aggravated statutory rape (Class D felony), or mitigated statutory rape (Class E felony). Increases the maximum age of a victim, from less than 13 to less than 16 years of age, for the offenses of aggravated sexual battery, aggravated statutory rape, soliciting sexual exploitation of a minor, and rape of a child. Enhances the penalty from a Class E to a Class C felony for the offense of soliciting sexual exploitation of a minor who is less than 16 years of age. Increases the age of a victim, from at least 15 to at least 16 years, for the offense of mitigated statutory rape. Requires a life without parole sentence for the offenses of being a child sexual predator, child rape or aggravated rape of a child if at least one of the offenses occurred on or after July 1, 2009. Requires \$30,000 minimum bail for defendant charged with a sexual offense if the victim is less than 16 years of age.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$15,596,700/Incarceration*

Assumptions:

- According to the Department of Correction (DOC), the average post-conviction time served for a Class E felony is 1.63 years; 2.43 years for a Class D felony; 3.59 years for a Class C felony; 6.17 years for a Class B felony; and 14.86 years for a Class A felony.
- According to DOC, the average operating cost per offender per day for calendar year 2009 is \$59.80. The cost per offender at 1.63 years is \$35,548.11 (\$59.80 x 594.45 days). The cost per offender at 2.43 years is \$52,995.96 (\$59.80 x 886.22 days). The cost per offender at 3.59 years is \$78,426.50 (\$59.80 x 1,311.48 days). The cost per offender at 6.17 years is \$134,727.00 (\$59.80 x 2,252.96 days). The cost per offender at 14.86 years is \$324,636.26 (\$59.80 x 5,428.70 days).
- An average of 95 admissions to the DOC for sexual battery offenses in each of the past 10 years. DOC estimates 20 percent (19) of those victims were between the ages of 13 and 16. Nineteen offenders will be convicted of aggravated sexual battery involving a victim less than 16

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years of age, and will serve an additional 4.54 years (an increase from 1.63 years for a Class E felony offense of sexual battery to 6.17 years for a Class B felony offense of aggravated sexual battery).

- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth would result in two additional offenders in the tenth year.
- According to DOC, 42 percent of offenders will re-offend within three years of their release. A recidivism discount of 42 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (21 offenders x 42% recidivism discount = 9 offenders). The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 12 (21 – 9) offenders serving an additional 4.54 years. The additional cost of increasing the average sentence length from 1.63 years to 6.17 years is \$99,178.89 (\$134,727.00 - \$35,548.11). The total additional operating cost for 12 offenders is \$1,190,146.68 (\$99,178.89 x 12).
- An average of 106 admissions for statutory rape offenses in each of the past 10 years. DOC estimates 40 percent (42) of those victims were between the ages of 13 and 16, and 80 percent (34) of those would be Class E felony offenses and the remaining 20 percent (8) would be Class D felony offenses under existing law. Under this bill, these offenses would be elevated to the Class A felony of rape of a child and would serve 25 years at 100 percent.
- Thirty-four offenders will be convicted of rape of a child who previously would have been convicted of mitigated statutory rape or statutory rape. Population growth will result in four additional offenders in the tenth year. A recidivism discount of 42 percent has been applied to this estimate resulting in 16 offenders (38 offenders x 42% recidivism discount = 16 offenders). The maximum cost in the tenth year is based on 22 offenders (38 – 16) serving an additional 23.37 years (an increase from 1.63 years for a Class E to 25.0 years for a Class A felony offense at 100 percent). The cost per offender at 25.0 years is \$546,048.75 (\$59.80 x 9,131.25 days). The cost per offender in the tenth year is \$218,419.50 (\$59.80 x 3,652.50 days). The additional cost of increasing the average sentence length from 1.63 years to 25.0 years is \$182,871.39 (\$218,419.50 - \$35,548.11). The total additional operating cost for 22 offenders in the tenth year is \$4,023,170.58 (\$182,871.39 x 22).
- Eight offenders will be convicted of rape of a child who previously would have been convicted of aggravated statutory rape. Population growth will result in one additional offender in the tenth year. A recidivism discount

of 42 percent has been applied to this estimate resulting in four offenders (9 offenders x 42% recidivism discount = 3.78 offenders). The maximum cost in the tenth year is based on five offenders (9 – 4) serving an additional 22.57 years (an increase from 2.43 years for a Class D to 25.0 years for a Class A felony offense at 100 percent). The cost per offender at 25.0 years is \$546,048.75 (\$59.80 x 9,131.25 days). The cost per offender in the tenth year is \$218,419.50 (\$59.80 x 3,652.50 days). The additional cost of increasing the average sentence length from 2.43 years to 25.0 years is \$165,423.54 (\$218,419.50 - \$52,995.96). The total additional operating cost for five offenders in the tenth year is \$827,117.70 (\$165,423.54 x 5).

- An average of 61 admissions for child rape offenses in each of the past 10 years. Population growth will result in six additional offenders in the tenth year. A recidivism discount of 42 percent has been applied to this estimate resulting in 28 offenders (67 offenders x 42% recidivism discount = 28 offenders). The maximum cost in the tenth year is based on 39 offenders (67 – 28) serving life without parole as a result of this bill. The cost per offender in the tenth year is \$218,419.50 (\$59.80 x 3,652.50 days). The total additional cost for 39 offenders is \$8,518,360.50 (\$218,419.50 x 39).
- According to DOC, there has been an average of 95 offenders admitted for Class B predatory offenses, 48 for Class C predatory offenses, and three Class E predatory offenses in each of the past 10 years. DOC assumes 10 percent (95 x 10% = 9.5) of the Class B offenders would have prior convictions and would receive life without parole rather than 6.17 years (average time served) as a result of this bill in the first year. Population growth would result in one additional offender in the tenth year. A recidivism discount of 42 percent has been applied to this estimate resulting in 5 offenders (11 offenders x 42% recidivism discount = 4.62 offenders). The maximum cost in the tenth year is based on six offenders (11-5). The cost per offender in the tenth year is \$218,419.50 (\$59.80 x 3,652.50 days). The additional cost of increasing the average sentence length from 6.17 years to life without parole is \$83,692.50 (\$218,419.50 - \$134,727.00). The total additional operating cost for six offenders in the tenth year is \$502,155 (\$83,692.50 x 6).
- DOC assumes 10 percent (48 x 10% = 4.8) of the Class C offenders would have prior convictions and would receive life without parole rather than 3.59 years (average time served) as a result of this bill in the first year. No significant incarceration cost increase will occur due to population growth in this period. A recidivism discount of 42 percent has been applied to this estimate resulting in 2 offenders (5 offenders x 42% recidivism discount = 2.10 offenders). The maximum cost in the tenth year is based on three offenders (5-2). The cost per offender in the tenth year is \$218,419.50 (\$59.80 x 3,652.50 days). The additional cost of increasing the average sentence length from 3.59 years to life without

parole is \$139,993 (\$218,419.50 - \$78,426.50). The total additional operating cost for three offenders in the tenth year is \$419,979 (\$139,993 x 3).

- DOC estimates 10 percent ($3 \times 10\% = 0.30$) of the Class E offenders would have prior convictions and would receive life without parole rather than 1.63 years (average time served) as a result of this bill in the first year. The maximum cost in the tenth year is based on one offender every three years serving additional time on their sentence. The cost per offender in the tenth year is \$218,419.50 (\$59.80 x 3,652.50 days). The annualized time served per conviction is 1,205.24 days (0.33 annual number of convictions x 3,652.25). The annualized cost per conviction is \$72,073.35 (\$59.80 x 1,205.24 days).
- One additional person every five years will be convicted of aggravated child rape with 50 years times served. The maximum cost in the tenth year is \$218,419.50 (\$59.80 x 3,652.50 days). The annualized time served per conviction is 730.50 days (0.20 annual number of convictions x 3,652.50 days). The annualized cost per conviction is \$43,683.90 (\$59.80 x 730.50 days).
- Total additional operating cost is \$15,596,691.49 (\$1,190,146.68 + \$4,023,170.58 + \$827,117.70 + \$8,518,360.50 + \$502,155 + \$419,979 + \$72,078.13 + \$43,683.90).
- In the absence of relevant data, it is assumed that bonds for sexual offenses against minors other than statutory rape are currently set above \$30,000 in most cases. The number of prosecuted statutory rape cases is relatively low. Of the cases in which the amount of bond will be increased under this bill, the number of offenders who would have been released on bond under the lower amount will not be significantly greater than the number released under the higher amount. There will be no significant increase in costs to local governments for additional jail time for persons who are unable to post bond.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

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